
(2003) 09 SC CK 0119

In the Supreme Court Of India

Case No : Civil Appeal No. 7251 of 2003 (Arising out of S.L.P (C) No. 17229 of 2002)

State of Maharashtra and Others

APPELLANT

Vs

Basantilal and Another

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Bombay Prohibition Act, 1949 — Section 34
Constitution of India, 1950 — Article 166

Citation : AIR 2003 SC 4688 : (2003) AIRSCW 5499 : (2004) 1 JCR 66(2) : (2003) 1 JT 357 Supp : (2003) 4 MhLj 1041 : (2003) 7 SCALE 332 : (2003) 10 SCC 620 : (2003) 6 Supreme 660 : (2003) 2 UJ 1531

Hon'ble Judges : N. Santosh Hedge, J;B. P. Singh, J

Bench : Division Bench

Advocate : Mukesh K. Giri, for the Appellant; Sanjay V. Kharde and Chandan Ramamurthi for Respondent No. 1 and Ajay Majithia, Shekhar K. Sinha and Kailash Chand, for the Respondent

Final Decision : Dismissed

Judgement

Santosh Hegde, J.—Heard learned counsel for the parties.

2. Leave granted.

3. The question involved in this appeal revolves around a narrow compass that is, does an order made by the Minister for State (Excise), Govt. of Maharashtra in a revision petition u/s 34 of the Bombay Prohibition Act, 1949 (the Act) require authentication under Article 166 of the Constitution of India ? The High Court of Judicature, Bombay at Aurangabad in a writ petition filed by the first respondent herein has held that it is necessary.

4. The question, therefore, for our consideration is whether a quasi-judicial order made under the provisions of a statute by a revisional authority who is also a Minister in the State Cabinet, require authentication, under Article 166.

5. It is an admitted fact that the order made by the Minister concerned was on a revision petition filed against the order of the Commissioner of Excise who himself was entertaining a petition before him under the provisions of the Act sitting as a quasi-judicial authority. It is also an undisputed fact that executive authorities also, if so empowered under a statute, exercise quasi-judicial powers. Such powers when exercised by an authority under a statute, sitting as a quasi-judicial authority results in a quasi-judicial order which can never be termed as an executive order requiring authentication under Article 166 of the Constitution of India.

6. The High Court in the impugned order relied on a judgment of this Court in *Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others*, which in turn was based on an earlier Constitution Bench judgment of this Court in *Bachhittar Singh Vs. The State of Punjab*, . We have perused the said judgments and find that the law laid down therein has no application to the facts of the case in hand. In neither of the two judgments of this Court referred to hereinabove, this Court has held that a quasi-judicial order made by an executive authority sitting as an appellate or revisional authority under a statute can be construed as an executive order. Therefore, in our opinion, the High Court fell into an error in construing the order made by the Minister, impugned in the writ petition, as an order requiring authentication under Article 166 of the Constitution.

7. Since the High Court has not gone into the merits of the case other than the question of requirement of authentication, we think it proper that the impugned order should be set aside and the matter be remanded to the High Court for fresh disposal, after hearing the parties concerned. We also direct that until the disposal of the writ petition by the High Court, status quo in regard to the shops concerned as existing prior to the filing of the writ petition, should be maintained.

8. For the reasons stated above, the impugned order is set aside and the matter is remitted to the High Court for disposal in accordance with law. This appeal is accordingly allowed.